Application No.: 10/776,619
Amendment dated: March 19, 2007
Reply to Office Action dated January 18, 2007

REMARKS/ARGUMENTS

Claims 7-9 and 17-33 are pending in this application. Claims 1-6 and 10-16 were previously cancelled. Claims 7 and 17 have been amended to incorporate the limitations of previously examined claims 9 and 19 respectively, and therefore, do not require an additional search. Claims 9 and 19 have been cancelled. It is respectfully submitted that no new matter has been added.

The Office Action withdrew claims 26-33 from consideration as being directed to a non-elected invention. Applicants respectfully disagree and request reconsideration.

CLAIMS 7-8, 17-18, AND 20-25 DEFINE OVER THE CITED ART

Claims 7-8, 17-18, and 20-25 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Pat. No. 4,253,768 to Yaroshuk et al., (hereinafter "Yaroshuk"). Applicant maintains the prior arguments from the Response to Office Action dated October 20, 2006.

Applicant respectfully traverses the rejections to claims 7-8, 17-18, and 20-25, as amended. Claim 7, as amended, recites:

> A method of computer aided detection of product defects, comprising:
>
> responsive to performance data of a product or a product line, comparing with a computer the performance data to performance benchmarks,
>
> when the comparison identifies an instance of product performance that fails a benchmark, determining whether the instance relates to a product defect previously undetected in the product line,
>
> if so, ***performing diffusion modeling for the product to determine an extent to which defective products have proliferated in a distribution chain for the product,*** and

generating an alert regarding the previously undetected product defect.

The Office Action readily admits Yaroshuk does not teach product diffusion modeling, as recited in independent claims 7 and 17 (*see* Office Action, p. 5). Nevertheless, the Office Action rejects product diffusion modeling as being allegedly obvious to one skilled in the art. Applicant respectfully disagrees.

In order to support a prima facie obviousness rejection of the claimed invention, MPEP § 2143.03 requires each and every claim limitation be taught or suggested by the prior art.

As stated above, the Office Action admits Yaroshuk does not teach product diffusion modeling. Without a teaching of diffusion modeling in Yaroshuk, the Office Action must cite to a suggestion in Yaroshuk to perform diffusion modeling to maintain a proper obviousness rejection. As the Office Action makes only an unsupported allegation of obviousness with no citation to a suggestion in Yaroshuk, the rejections to claims 7 and 17 are improper and should be withdrawn.

Moreover, Applicant submits the rejection to product diffusion modeling is based on impermissible hindsight. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so. *In re Kahn*, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006) (discussing rationale underlying the motivation-suggestion-teaching requirement as a guard against using hindsight in an obviousness analysis). Applicant submits the lack of a citation in the Office Action to a teaching or suggestion in Yaroshuk to perform diffusion modeling coupled with only an unfounded allegation that diffusion modeling would have been

obvious to one skilled in the art supports the conclusion that the rejection is based solely and improperly on the teachings of the application itself. Thus, for this reason as well, the rejections to claims 7 and 17 under 35 U.S.C. § 103(a) are improper and should be withdrawn.

Accordingly, for at least these reasons, since each and every limitation of independent claims 7 and 17 are not taught or suggested by the cited prior art, independent claims 7 and 17, as amended, are in condition for allowance, and the rejection under 35 U.S.C. § 103(a) should be withdrawn. Claims 8, 18, and 20-25 depend from allowable independent claims 7 and 17, and therefore are allowable as well.

Request for Allowance

It is believed that this Amendment places the application in condition for allowance, and early favorable consideration of this Amendment is earnestly solicited.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the telephone number listed below.

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The Office is hereby authorized to charge any fees, or credit any overpayments, to Deposit Account No. **11-0600**.

Respectfully submitted,

KENYON & KENYON LLP

Dated: March 19, 2007

By: _____
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